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INTERPRETIVE BULLETIN

**Use of Public Resources by Elected Officials
to Communicate with Constituents or Respond to Criticism**

The Office of Campaign and Political Finance periodically issues and revises interpretive bulletins regarding various aspects of M.G.L. c. 55, the Massachusetts campaign finance law. The office has frequently been asked to advise whether an elected official's use of public resources to inform constituents of the official's record, or to respond to criticism from political opponents, is consistent with the campaign finance law. This interpretive bulletin provides a general framework for elected officials and their staff.

Summary: An elected official or the official's staff may use public resources to produce and distribute information to constituents regarding the official's positions on issues if the activity is consistent with the official's responsibilities. Elected officials and their staff may also use public resources to respond to criticism of the official's record, even from opponents, provided such use is **reasonable** and **proportionate** in scope. Public resources may not be used to attack the candidacy of an opponent.

I. Discussion

The campaign finance law prohibits the use of any public resource¹ for a political purpose, i.e., to influence the nomination or election of an individual or to promote or oppose a ballot question. See M.G.L. c. 55, §§ 1 and 7. See also Anderson v. City of Boston, 376 Mass. 178 (1978). The law demonstrates "a general legislative intent to keep political fundraising and disbursing out of the hands of nonelective public employees. . . ." Id., at 186-187 (1978). OCPF has advised public employees that they may not, consistent with the Anderson case, engage in political activities while at work. See IB-91-01 and IB-92-02.

Neither the office's prior interpretive bulletins nor Anderson discuss the extent to which an employee of an elected official, during that employee's work day, may communicate with constituents regarding the official's positions on issues or respond to criticism of the official's

¹ Public resources include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copiers, fax machines, computers and word processors, as well as the use of a state, county or municipal seal. Even the occasional, minor use of public resources for political purposes is inconsistent with state law and should be avoided. See IB-91-01 (summarizing this office's interpretation of Anderson).

performance of his or her duties. Likewise, neither the interpretive bulletins nor Anderson address whether other public resources, such as office equipment or stationery, may be used for these purposes.

In Anderson, the Supreme Judicial Court held that the City of Boston could not appropriate funds to establish and staff an office for the purpose of publicly advocating a favorable vote on a ballot question. OCPF has consistently interpreted the decision to mean that public resources, including a public employee's work time, cannot be used for any political purpose.² However, the office has also emphasized that determining whether a particular governmental expenditure is prohibited by the campaign finance laws requires "a careful consideration and analysis of such factors as the style, tenor and timing of the expenditures in question, and must be made on a case by case basis." See AO-86-20 (generally discussing the obligation to consider style, tenor and timing of expenditures), AO-89-32 (materials published and distributed to influence town meeting are not within scope of prohibition) and AO-93-36 (a city can make expenditures to challenge legality of the Attorney General's certification of a ballot question which affects the city).

II. Examples

(a) Communication with constituents

An elected official or the official's staff may use public resources to produce and distribute a periodic summary of positions taken by the official provided the production and distribution of the summary is consistent with the official's governmental responsibilities. An activity meets this test if the activity is **primarily** related to the governmental tasks, duties or responsibilities which the official was elected to perform. The activity should not be **primarily** undertaken to advance the official's campaign for public office or to enhance the official's political future.

For example, a legislator may use public resources to distribute a newsletter describing legislation pertinent to the legislator's district or to address concerns of particular constituencies within the legislator's district. While such a summary or newsletter may incidentally enhance the legislator's political future, the primary purpose of the summary or newsletter, if paid for with public funds, must be consistent with the legislator's official responsibilities. If the newsletter was issued and distributed to the voters in a legislator's district for the first time shortly before an election, the timing of the distribution would suggest a purpose which is primarily political and, therefore, not consistent with the legislator's official responsibilities. Of course, a publicly financed newsletter may not solicit contributions for the official's campaign committee or ask readers to vote for the official.

An elected official's campaign committee may, at the committee's cost, reprint or distribute material previously publicly produced by the official's office for political purposes. See AO-91-23 (statewide official's campaign committee could reprint and distribute a fiscal update originally prepared with public resources).

² In IB-92-02, the office recognized that a policy-making official may speak about a ballot question affecting matters within that person's official responsibility, even if such speech takes place during the official's work hours: "If policy-making officials were prohibited from stating their positions regarding a ballot question related to their official responsibility, such a prohibition would unnecessarily (and probably unconstitutionally) restrain such officials from carrying out the duties of their offices."

(b) Responding to criticism

The use of some public resources by an elected official to respond to criticism of the official's performance, or the performance of the official's staff, may also be consistent with the campaign finance law.

The campaign finance law does not prohibit an elected official, or that official's staff, from using reasonable efforts to defend the official's record, correct inaccurate statements, or present the official's position on a particular public policy issue, even though the use of some public resources may be involved. While responding to such criticism may incidentally enhance the official's political future, it is consistent with the campaign finance law, if its purpose is to respond to criticism of the official's position or official action. Therefore, staff time, stationery, copying and related expenses associated with responding to criticism may be paid from public funds, provided such use is reasonable and proportionate in scope. Determining whether the use of public resources is appropriate may require careful consideration of a number of factors, e.g., the proportionality, timing, and content of the response.

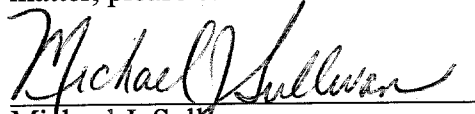
Examples of permissible responses to criticism may include: (1) drafting and distributing a press release responding to criticism by an opponent or others regarding the policies or official actions of the elected official; or (2) using a computer database, researchers, or office facilities paid for with public resources to analyze and refute public criticism regarding the impact of the official's policies or official actions.

Impermissible responses include responses which (1) involve the use by the official or staff of public resources to attack the candidacy of an opponent or (2) are not reasonable or in proportion to the extent of the criticism. If an elected official's primary purpose is to criticize an opponent or enhance his or her political future, the expenditures incurred in connection with a press release or position paper must be undertaken by the official's campaign committee and may not involve the use of any public resources. For example, an official's campaign committee could make an expenditure to (1) draft and distribute a press release criticizing the official's opponents; (2) analyze the likely impact of the opponent's policies; (3) print and mail a flyer to voters which criticizes opponents, or (4) explain why the official's accomplishments support his reelection or a citizen's vote.

III. Conclusion

Elected officials and their staff should be sensitive to the legal constraints imposed by the campaign finance law and Anderson when using public resources to communicate with constituents or to respond to criticism. If an elected official or staff member is uncertain whether the use of public resources is appropriate, the official or staff member should contact OCPF for guidance or an advisory opinion.

If you have questions regarding this interpretive bulletin or any other campaign finance matter, please call OCPF at 1-800-462-OCPF or 617-727-8352.


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